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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

2 COMMISSIONERS

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

DEC 23 2008

DOCKETED BY

7 PAC-WEST TELECOMM, INC.,

8 Complainant,

9 vs.

10 QWEST CORPORATION,

11 Respondent.

DOCKET NO. T-01051B-05-0495

DOCKET NO. T-03693A-05-0495

PROCEDURAL ORDER12 **BY THE COMMISSION:**

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14 On July 25, 2008, Qwest Corporation ("Qwest") filed a "Notice of Final Order and Remand"
15 and a Motion for Judgment Pursuant to Mandate ("Motion") in the above-captioned dockets. Qwest
16 had filed an action in the United States District Court for the District of Arizona ("District Court")
17 seeking declaratory and injunctive relief from an Order of the Arizona Corporation Commission
18 ("Commission") in Decision No. 68820. The District Court issued its Order in that action on March
19 6, 2008. By its Motion, Qwest seeks to have the Commission vacate provisions of Decision No.
20 68820 which Qwest claims were enjoined by the Order of the District Court and requests the
21 Commission to order Pac-West Telecomm, Inc. ("Pac West") to refund Qwest the amount of
22 \$1,849,153.22, which Qwest had paid to Pac-West pursuant to Decision No. 68820.

23 By Procedural Order dated September 30, 2008, Qwest's Motion to refund the amounts
24 previously paid to Pac West was denied, and the Parties and Commission Utilities Division ("Staff")
25 were directed to file position statements on the issue(s) they believe the Commission must address as
26 a result of the District Court's remand, by November 10, 2008. A Procedural Conference was set for
27 November 17, 2008.

28 On November 5, 2008, the FCC released its Order on Remand concerning ISP-Bound traffic.

1 Each of the parties to this matter desired additional time to analyze the effect of the FCC's recent
2 order and jointly requested that the November 10, 2008, date for comments be vacated. The request
3 was granted by Procedural Order dated November 4, 2008.

4 Pac West, Qwest and Staff appeared through counsel at the November 17, 2008, Procedural
5 Conference. Pac West believes that the holding in the November 5, 2008, FCC Order resolves this
6 matter without the need for an evidentiary hearing. Qwest disagrees about the impact to the FCC's
7 Order. Pac West proposed that as the next step in the process, the parties should brief the impact of
8 the recent FCC ruling on the dispute before us. Qwest argued that as before, the parties should
9 submit a list of issues that the Commission must resolve and that the matter should be set for an
10 evidentiary hearing. Staff believed that initial briefing on the impact of the recent FCC order would
11 be helpful, but did not see any problem with proceeding simultaneously with briefing and the filing of
12 an issues matrix.

13 To determine whether a hearing is necessary, the Commission must have a clear
14 understanding of the issues the parties believe are salient to the resolution of this dispute, and whether
15 there are material issues of fact. Pac West's statements at the November 17, 2008 Procedural
16 Conference and its proposal for briefing suggests that what Pac West wants to do is to file a
17 dispositive motion. While we agree with Staff that pre-hearing briefing can be helpful, such briefing
18 may take different forms depending on whether it is part of a dispositive motion or intended to frame
19 the relevant issues prior to a hearing. Qwest's original suggestion made at the September 25, 2008,
20 Procedural Conference, that the parties file position statements on the issue(s) and whether they
21 believe there are material issues of fact, to be followed by a Procedural Conference, continues to be
22 the most efficient approach. Once the Commission understands the positions of the parties, it can
23 make a determination whether an evidentiary hearing is required or whether the matter can be
24 resolved after legal argument alone. Pac West is not precluded, however, from filing any potentially
25 dispositive motions it believes are in its best interests.

26 IT IS THEREFORE ORDERED that the parties shall file position statements on the issue(s)
27 of fact and law that they believe the Commission must resolve in this matter, by January 15, 2009.

28 IT IS FURTHER ORDERED that a telephonic **Procedural Conference** for the purpose of

1 establishing the procedures and guidelines for resolving the issue shall commence on **January 21,**
2 **2009, at 10:00 a.m.,** as soon thereafter as is practical, at the Commission Tucson offices, Room 218,
3 400 West Congress, Tucson, Arizona 85701. The parties should contact the Hearing Division (602)
4 **542-4250,** the week prior to the Procedural Conference to determine the procedures to participate in
5 the telephonic procedural conference.

6 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
7 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

8 Dated this 19th day of December, 2008

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11 
12 JANE RODDA
ADMINISTRATIVE LAW JUDGE

13 Copies of the foregoing mailed/delivered
this 19th day of December, 2008 to:

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